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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/607,069	06/29/2000	Jie Cheng	200-0382	7285

28395 7590 01/26/2005

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EXAMINER


FISHER, MICHAEL J

ART UNIT	PAPER NUMBER
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3629

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<div style="text-align: center;">  <b>Office Action Summary</b> </div>	<b>Application No.</b> 09/607,069	<b>Applicant(s)</b> CHENG ET AL.	
	<b>Examiner</b> Michael J Fisher	<b>Art Unit</b> 3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 23,24 and 26-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 23,24 and 26-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 23 and 26-40 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. There is no technological innovation in the claims. The limitations could be met merely by looking at a table with the "determining" step being accomplished by a person with no technology being used.

Note: While the preamble states that the method is computer-implemented, only claims 24 and 41 actually use a computer.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 23 and 26-41 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. As to claim 23, there is no way to ascertain the functions as claimed. Specifically, there is no way for one of ordinary skill

Art Unit: 3629

in the art to know what to use as a, "constraint for determining a neighbor relationship..." or what to use as a "neighborhood distance function" or how to use this unknown function for, "determining a distance between a pair of used..." or how to, "determine an estimate value... based on the data from the nearest neighbor database..." As to claim 26, there is no way to determine how to, "determin(e) a weighted estimate value... based on the data from ..." While the claims are to be read in light of the specification, there must be enablement in the claims for the limitations therein. As to claim 31, there is no enablement for the limitation, "...resale plan information". The only mention in the specification to a "resale plan" is on page 9, line 8, and there is no mention as to exactly what is meant by, "resale plan information". As to claims 33,35 and 36, the formulae in claims 33,35 and 36 are incomplete. While they list variables to be used, they do not explain how to use the variables therefore there is no way to use these claims. Due to these unknown functions there is no way to make and/or use the invention. Further, from the claims, it would not be possible for one of ordinary skill in the art to know if they were infringing on the claimed invention.

### ***Response to Arguments***

Applicant's arguments filed 11/3/04 have been fully considered but they are not persuasive. As to arguments involving the formulae in claims 33,35 and 36, they are not complete. Further, the applicant remarks that "(please note the variables v1 and v2 are used in a different context than claim 33)". This would appear to reinforce the examiner's arguments that the formulae are unclear as there are acknowledged by

Art Unit: 3629

applicant different uses for the same variables. This, coupled with vague references to using variables in a formula without explaining the exact formula, would not allow one of ordinary skill in the art to make and/or use the invention. Further, applicant lists two Errors, p and k, without explaining how to compute the error. Thus, there is no enablement. For instance, in claim 33, is the limitation "B) determining an Error k based on V1, Const, F d, K and Error p"..." There is no way to understand how to determine the "Error k". While the claims are to be read in light of the specification, there must be enablement in the claims for the limitations. The examiner understands the variables, however, there is no way to understand how to combine them from the claims to achieve the desired result and therefore, different people, combining the variables in different ways would achieve wildly different results and could both be infringing on the patent if granted.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J Fisher whose telephone number is 703-306-5993. The examiner can normally be reached on Mon.-Fri. 7:30am-5:00pm alt Fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 703-308-2702. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.


Art Unit: 3629

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael J Fisher



Patent Examiner  
GAU 3629

MF   
1/24/05